

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,

and

CHILDREN'S MEDICAL CENTER
CORPORATION,

Plaintiffs,

v.

SHIRE PHARMACEUTICALS, INC.,

and

SHIRE REGENERATIVE
MEDICINE, INC.,

Defendants

Civil Action No. 13-cv-10020

**PLAINTIFFS MASSACHUSETTS INSTITUTE OF TECHNOLOGY
AND CHILDREN'S MEDICAL CENTER CORPORATION'S
SUPPLEMENTAL INFRINGEMENT CONTENTIONS**

Pursuant to L.R. 16.6 and section I.D.1 of the Joint Scheduling Order, dated January 30, 2014 [D.I. 53], Plaintiffs Massachusetts Institute of Technology and Children's Medical Center Corporation (collectively, "Plaintiffs") supplement their Infringement Disclosures ("Supplemental Disclosures") regarding United States Patent Nos. 5,759,830 ("the '830 patent"), and 5,770,193 ("the '193 patent"), (collectively, the "patents-in-suit"), including the appended Attachments A and B.

Plaintiffs base these Supplemental Disclosures on their knowledge, understanding, information, and beliefs as to the facts reasonably and currently available to Plaintiffs as of the date of this disclosure. Plaintiffs reserve the right to seek leave to amend or supplement this

disclosure pursuant to the Federal and Local Rules and the January 30, 2014 Joint Scheduling Order; as additional discovery is conducted or additional information is obtained; in view of any investigation or expert analysis; and in response to any claim construction ruling or other applicable order entered by the Court.

I. ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS

Defendant Shire Regenerative Medicine, Inc. (“SRM”) directly infringed claims 1-4, 6-9, 15, and 16 of the ’193 patent. *See* Attachment A. SRM indirectly infringed claims 3 and 4 of the ’193 patent by actively inducing its customer physicians to directly infringe claims 3 and 4, by instructing and assisting physicians to implant Dermagraft in human diabetic foot ulcers. *See, e.g.,* Dermagraft Instructions for Use, MIT0003998 at 3999. SRM also indirectly infringed claims 3 and 4 of the ’193 patent by contributory infringement by selling Dermagraft to its customer physicians for use in practicing the patented method by implanting Dermagraft in diabetic foot ulcers, where Dermagraft is not a staple article of commerce suitable for substantial non-infringing uses. *See, e.g.,* MIT0004084 (Shire plc press release concerning its decision to not pursue another FDA indication). SRM directly infringed claims 1-4, 6, and 8 of the ’830 patent. *See* Attachment B. To the extent that SRM did not literally infringe any of the aforementioned claims, SRM infringed under the doctrine of equivalents.

Defendant Shire Pharmaceuticals indirectly infringed by actively inducing SRM to directly infringe the above listed of the patents-in-suit. Among other things, Shire Pharmaceuticals hired sales and support personnel for Dermagraft and directed the conduct of SRM’s Dermagraft business through its participation in the Shire “In-Line” marketed products group.

Dated: November 18, 2014

Respectfully submitted,

MASSACHUSETTS INSTITUTE OF
TECHNOLOGY and CHILDREN'S
MEDICAL CENTER CORPORATION

By their attorneys,

/s/ Daryl L. Wiesen

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CERTIFICATE OF SERVICE

I, Daryl L. Wiesen, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on November 18, 2014.

/s/ Daryl L. Wiesen